D.B. INCOME TAX APPEAL NO.7/2003
Commissioner of Income Tax, Uaipur Vs. Shri Prameshwar Bohra.

Date of judgment : 04th January, 2007

PRESENT

HON'BLE MR. JUSTICE RAJESH BALIA
HON'BLE MR. JUSTICE CHATRA RAM JAT

Mr. K.K. Bissa for the appellant.
Mr. Anjay Kothari for the respondents

This appeal is directed against the order of the Income Tax Appellate Tribunal, Jodhpur Bench Jodhpur dated 6th Dec., 2001. While admitting the appeal on 17.2.2003, the following question of law have been framed as substantial questions of law for consideration in this appeal:-

1. Whether on the facts and in the circumstances of the case, the I.T.A.T. Was justified in quashing the notice issued on 17.6.1997 under Section 148 of I.T. Act for the Assessment Year 1993-94 by resorting to provide to Section 147 even by holding that there is no failure on the part of assessee in disclosing fully and truly all material

facts necessary for the assessment in question?

2. Whether on the facts and in the circumstances of the case, and on a correct interpretation of Sections 68 and 69 of the Income Tax Act, 1961, the Tribunal was right in holding that the unexplained investment/cash credit amounting to Rs.1,55,316/- appearing in the books of accounts on the first day of previous year relevant to the assessment year 1993-94 was not taxable as income of the assessee for the said previous year?

The first question does not give out the real picture of the controversy raised and decided by the Tribunal inasmuch as it is not a case in which the question of expiry of limitation for assuming jurisdiction to issue notice under Section 148/147 arises for consideration. In fact, the impugned notice for re-assessment of the income for assessment year 1993-94 has been issued on 17.6.1997 that is to say before expiry of 4 years from the end of the assessment year

1993-94, hence, the case falls within the province of proviso to Section 147 or under Section 149 providing limitation for initiating proceeding under Section 147 which remains within limitation. The question really was raised about the validity of taking action under Section 147 at all. In fact, in relation to the assessment year 1993-94, under Section 147 the first notice was issued on 11th July, 1996 itself and the income which allegedly escaped assessment from tax was the one which is subject matter of question No.2 that is to say an amount of investment/ cash credit of Rs.1,55,316/- was appearing in the books of account of the assessee on the first date of previous year relevant to the assessment year 1993-94 that is to say on 1st April, 1992 or in other words that was carried forwarded from the previous year ending on 31st March, 1992.

The notice issued on 11th July, 1996 was not pursued by the Assessing Officer inter alia on the ground that it was issued without obtaining prior approval from the Addl. CIT and hence, after seeking prior approval of the Addl. CIT fresh notice was issued

under Section 147/148 on 17th June, 1997. The assessee has raised contention that since first notice was already pending, the second notice could not have been issued and secondly, that there is no provision in the Income Tax Act to vacate the already issued notice and considering it to be pending, by ignoring the vacation order, no fresh notice could be issued.

Apparently the question No.1 has not been framed to bring out this controversy. The question No.2 is a question which relates to the merits of the additions made in the assessee's income through re-assessment as we shall presently notice that the question No.2 deserves to be decided in favour of the assessee and against the Revenue, we do not deem it necessary to reframe the question about the validity of re-assessment proceedings in the present case as it would not be necessary to decide the case.

On the merit of the additions made in the income of the assessee, there is a clear finding and about which there is no dispute that the amount added

in the income of the assessee as unexplained investment or cash credit in the assessment year 1993-94 was the same amount which was credited in the books of account of the assessee for previous year ending on 31st March, 1992. The Tribunal has categorically come to a finding, and that finding is not under challenge, that this is not a case of cash credit entered in the books of account of the assessee during the year but it is a case in which the assessee has invested the capital in the business and this amount was shown as a closing capital as on 31st March, 1992 and on 1st April, 1992 it was an opening balance. Considering this aspect, the Tribunal has come to the conclusion that what was already credited in the books of accounts ending on 31st March, 1992 for financial year 1991-92 relevant to Assessment Year 1992-93 cannot be an unexplained cash credit or investment in the books of account maintained for the financial year 1992-93, the accounting period of which ends on 31st March, 1993 so as to warrant its consideration as unexplained investment or cash credit for its relevant assessment year 1993-94.

It does not require any elaborate argument that a carried forward amount of the previous year does not become an investment or cash credit generated during the relevant year 1993-94. This alone is sufficient to sustain the order of the Tribunal in deleting the amount of Rs.1,55,316 from the assessment for assessment year 1993-94. Since the appeal succeeds on the merit of the assessee's case in respect of the additions made in the income computed on reassessment the validity of notice dated 17.6.1997 need not be gone into.

Accordingly, this appeal fails and is hereby dismissed. No order as to costs.

[CHATRA RAM JAT], J. [RAJESH BALIA], J.

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